

Let Third-Country Nationals Become Citizens in Host Member States and of the European Union

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Dora Kostakopoulou warmly argues for an EU citizenship reform that will disentangle EU citizenship from Member State nationality and, thus, create an autonomous Eurozenship status directly accessible by third-country nationals. Dora's arguments stem from the gaps, contradictions and tensions inherent in the present EU citizenship's institutional form, in particular due to the lack of uniformity in the application of EU law owing to differing naturalisation requirements in the various Member States. Dora argues that, if readers share this diagnosis, they may agree that there is a duty on the part of the EU to step in and correct malfunctions and deficits. She points to the "duty of European institutions," derived from their role as upholders of the EU citizenship norm and promoters of the well-being of the Union's peoples.

I agree with Dora's diagnosis, and I agree that the EU – and EU Member States – should act to rectify shortcomings of the Union citizenship construction that largely unconstrained allows inequality in regard to access to the status of Union citizenship and rights attached to it. However, I cannot subscribe to Dora's solution.

In my opinion, the suggested reform is not the right cure to the shortcomings of the present Union citizenship practice – leaving out the question on the realism and practicability of implementing such a reform, which will require a treaty amendment (to which I will return at the end of this contribution).

First, I find it imperative that long-term third-country nationals and their descendants in the EU can obtain both citizenship with full rights in their host Member State and Union citizenship with Union citizenship rights in the EU. Citizenship is founded on a special bond of allegiance to the state and reciprocity of rights and duties, and EU citizenship may be seen as inter-state citizenship that unites the People of Europe – to quote Advocate General Poiares Maduro in *Rottmann* (C 135/08).

Second, I think that there is a shared responsibility between the Union, EU institutions and EU Member States to solve the problems stemming from Member States' differing citizenship legislation. Still, the primary responsibility lies within the Member States; in the long term, they have a common interest in solving the problems. As pointed out by Richard Bellamy, Member States have conferred competences upon the Union, and the Member States are upholding the most valued Union citizenship rights.

Dora's proposal for a reform that disentangles Eurozenship from national citizenship will not necessarily improve resident third-country nationals' opportunities for

becoming citizens of their host Member State. Instead, I would suggest that the Member States within the institutional framework of the EU cooperate to reach an agreement on the adoption of a more uniform legislation on acquisition and loss of their citizenship and thereby Union citizenship. I concede that such an approach has been wishful thinking for years, and that there is a risk that some Member States will focus on restrictive options. Nevertheless, I think it is too early to give up on this possible solution.

Harmonising citizenship legislation was proposed for the Nordic states in the 1940s when it was discussed to establish a Nordic Union with a Nordic citizenship. The association Norden ("The North") asked the head of the Danish Interior Ministry's Citizenship Office to examine the different possibilities for establishing a common Nordic Union citizenship, as outlined in a booklet "Nordic Citizenship" (Knud Larsen: *Nordisk Statsborgerret*. Copenhagen: Foreningen Norden (1944)).

As in the case of the EU, the national identity of the five Nordic states was considered an obstacle for introducing a common citizenship. Rather, the author of the booklet suggested establishing a (Nordic) Union citizenship that followed from national citizenship. Since the acquisition of one of the Nordic states' citizenship would have implications for the other Nordic states, the author found that the five states' citizenship legislation should be harmonised. He found the significant differences between the states' regulations unsustainable. For example, it was untenable that in one Member State, a foreigner might easily acquire citizenship, and thereby Union citizenship, and move to another Member State where he or she would be entitled to enjoy better rights than granted for foreigners born and raised in that state. The booklet includes an analysis of solutions chosen by other states that had formed unions and comparisons between the citizenship legislation of the five Nordic countries to identify the best practices and suggest new common rules and new forms of cooperation.

Eventually, the Nordic states did not create a Nordic Union as other major issues took precedence by the end of the Second World War. Still, Denmark, Norway and Sweden established a joint committee to draft (roughly) uniform bills on acquisition and loss of citizenship. In order to lay down (almost) uniform legislation, each country had to make a number of compromises. The committee proposed that the acquisition of one of the countries' citizenship by a citizen of another should be facilitated by entitlement and be based on residence. It also recommended that birth and residence requirements could be satisfied by birth and residence in any one of the countries. The three countries agreement on these rules was later superseded by an agreement among all five Nordic countries.

Similarly, a harmonisation of the EU Member States' citizenship legislation might ameliorate the situation of resident third-country nationals. I realise that it will be more difficult to reach an agreement among the 27 EU Member States due to the high number of states and their plural history of nation-building. Still, an effort to reach an agreement on citizenship cooperation should be made.

In so far as Member States would engage in formal cooperation on harmonisation of their citizenship legislation, notably with expert consultation, I contend that the states

will be more careful when exercising their competence in the citizenship area and more observant when considering possible side effects (cf. [European Parliament resolution of 16 January 2014 on EU citizenship for sale](#)).

I have a few additional comments on the realism in getting Dora's proposal for an autonomous Eurozenship adopted. Dora considers that Member States have no reason to resist it 'because there is no competence encroachment'. Member States would retain their competence, and at the same time, the EU would have the power to make an independent determination of EU citizenry. Conditioning EU citizenship on domicile for a period of five years in the territory of the Union would make the social fact of community membership a true determinant of belonging and end the exclusion of 20 million long-term resident third country nationals.

Being a citizen of Denmark, I predict that some Member States may find very good reasons to resist the proposal. Denmark may serve as an example because the Danish population voted "no" to the Maastricht Treaty, which led to a national compromise that again led to the Edinburgh Agreement and four Danish opt-outs from the Treaty, among others on Union citizenship and Justice and Home Affairs-cooperation (JHA).

As the Amsterdam Treaty specified that Union citizenship would complement and not replace national citizenship, the Danish opt-out on Union citizenship is no longer of any practical meaning. Alas, the JHA opt-out is. It means, among other things, that Denmark is not bound by the long-term residence Directive (Council Directive 2003/109/EC of 25 November 2003). Therefore, Denmark has been able to adopt very strict requirements for acquisition of a permanent residence permit, among others eight years residence in Denmark and regular, full-time employment or self-employment in Denmark for at least three-and-a-half years during the last four years. In addition, the Danish Parliament is presently discussing a bill on revocation of residence permits for refugees and their family (in case of improved conditions in their country of origin).

A co-determined Union citizenship introduced by a Treaty change can hardly avoid interfering with the strict Danish aliens legislation. Therefore, such an amendment has limited chances for gaining Danish support. It will probably not have to survive a Danish referendum. Its destiny is likely to be decided by the Danish Parliament.

I agree with Dora's diagnosis, and I agree that the EU – and EU Member States – should act to rectify shortcomings of the Union citizenship construction that largely unconstrained allows inequality in regard to access to Union citizenship and Union citizenship rights. However, I cannot subscribe to Dora's solution.

In my opinion, the suggested reform is not the right cure to the shortcomings of the present Union citizenship practice – leaving out of account the question on the realism and practicability of implementing such a reform that will require a treaty amendment (to which I will return at the end of this contribution).

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Second, I think that there is a shared responsibility between the EU, EU institutions and EU Member States to solve the problems stemming from the Member States' differing citizenship legislation. Still, I believe that the main responsibility lies with the Member States and that they in the long term have a common interest in solving the problems. As pointed out by Richard Bellamy, the Member States have conferred competences upon the Union, and the Member States are upholding the most valued Union citizenship rights.

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Instead, I would suggest that the EU Member States within the institutional framework of the EU cooperate with a view to reach an agreement on adoption of more uniform legislation on acquisition and loss of their citizenship and thereby Union citizenship. I concede that such an approach has been wishful thinking for years, and that there is a risk that some Member States will focus on restrictive options. Still, I think it is too early to give up on this solution.

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The booklet includes an analysis of solutions chosen by other states that had formed unions and comparisons between the citizenship legislation of the five Nordic countries with a view to identify best practices and suggest new common rules and new common forms of cooperation. The overall conclusion was that with more extensive Union citizenship rights follows stronger state interest in the matter.

Eventually, the Nordic states did not establish a Nordic Union as other major issues took precedence by the end of the Second World War. Still, Denmark, Norway and Sweden established a joint committee to draft uniform bills on acquisition and loss of citizenship. Attention was paid to the close relations between the countries. In order to lay down (almost) uniform legislation, each country had to make a number of compromises. The committee proposed that the acquisition of one of the countries' citizenship by a citizen of another should be facilitated by entitlement and based on residence. The committee also proposed that birth and residence requirements could be satisfied by birth and residence in any one of the countries. The three countries' agreement on these rules was later superseded by an agreement among all five Nordic countries.

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In so far as EU Member States would engage in formal cooperation on harmonisation of their citizenship legislation, notably with expert consultation, I contend that the states will be more careful when exercising their competence in the citizenship area and more observant when considering possible side effects (cf. [European Parliament resolution of 16 January 2014 on EU citizenship for sale](#)).

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